

State of Colorado



John W. Hickenlooper
Governor

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Board Chair

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Board Director

State Personnel Board
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AGENDA PUBLIC BOARD MEETING November 15, 2016

A public meeting of the Colorado State Personnel Board will be held on Tuesday, November 15, 2016 at 1525 Sherman Street, 1st Floor Conference Room 103, Denver, Colorado 80203. The public meeting will commence at 9:00 a.m.

Reasonable accommodation will be provided **upon request** for persons with disabilities. If you are a person with a disability who requires an accommodation to participate in this meeting, please notify Board staff at 303-866-3300 by November 11, 2016.

CALL TO ORDER

- Attendance.
- Disclosure of any potential conflicts of interest with regard to present Board business and notice of recusal, if applicable.

I. REPORT OF DEPARTMENT OF PERSONNEL AND ADMINISTRATION [DPA] AND REPORT OF THE DIVISION OF HUMAN RESOURCES [DHR]

II. PENDING MATTERS

There are no pending matters before the Board this month.

III. REVIEW OF INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES ON APPEAL TO THE STATE PERSONNEL BOARD

- A. Lynn A. Michel v. Department of Transportation, State Personnel Board case number 2015G091(c).

Complainant, a certified employee, seeks review of Respondent's decision not to select her for the position of Office Manager I, arguing that Complainant was subjected to disparate treatment on the basis of age in violation of the Colorado Anti-Discrimination Act (CADA), §24-34-401, *et seq.*, C.R.S. Complainant seeks all damages to make her whole, including but not limited to back pay from the date of the final agency decision to the date of hiring for the promotional position of Office Manager I on January 17, 2015; front pay, with yearly pay increases, in the amount of compensation Complainant would have earned had she been promoted to the age of 65; compensatory damages, including but not limited to

back benefits, including lost PERA or service credits as a result of not being promoted, and all expense related to seeking other employment. Complainant also seeks an award of attorney fees and costs.

Respondent requests its decision not to select Complainant for the Office Manager position be affirmed and denial of all relief sought by Complainant.

On June 24, 2016, The Administrative Law Judge reversed the Respondent's decision not to select Complainant for the Office Manager I position. To make Complainant whole for the age discrimination she has suffered, Respondent was ordered to provide Complainant a lump sum payment equal to the 12.5% raise she was denied, as well as any additional PERA contributions that would have resulted from this pay increase with statutory interest. The payment should be calculated from the date of hire of Ms. Berner as Office Manager I through the date of this initial decision, and shall be reduced by any salary increase Complainant received in her current or former position since January 2015. Attorney fees and costs are not awarded.

B. Mathew Mark Stiles v. Department of Corrections, Denver Reception & Diagnostic Center, State Personnel Board case number 2016B034.

Complainant, who was a certified state employee, appeals the termination of his employment by the DOC. Complainant alleges that, although he did commit the act for which he was disciplined, the decision to terminate his employment was arbitrary, capricious or contrary to rule or law, and that his termination was not within the range of reasonable alternatives available to the appointing authority. Complainant seeks reinstatement, as well as back pay and benefits.

Respondent requests that its decision be affirmed and that Complainant's appeal be dismissed with prejudice. For the reasons set forth below, Respondent's decision to terminate Complainant's employment is modified.

On June 17, 2016, the Administrative Law Judge modified the Respondent's action, and ordered the termination be rescinded and replaced with a ten percent (10%) reduction in pay for six (6) months, from November 2, 2015 to May 2, 2016. Complainant is entitled to full back pay and benefits including but not limited to PERA contributions and service credit from November 2, 2015, to the date of reinstatement, offset by any substitute earnings or unemployment compensation received by Complainant.

IV. REVIEW OF PRELIMINARY RECOMMENDATIONS OF THE ADMINISTRATIVE LAW JUDGES TO GRANT OR DENY PETITIONS FOR HEARING

A. Peggy Kramer v. Department of Corrections, State Personnel Board case number 2016G043.

Complainant is a certified employee of the Department of Corrections (DOC). She seeks review of a memorandum and of a corrective action issued by Respondent, alleging that these actions constituted unlawful retaliation for grieving, and pursuing a Director's Review of, her non-selection for a GP III Contracts Administrator position. She also alleges that she has been subjected to gender discrimination and a hostile work environment.

Respondent asserts that Complainant has failed to establish the existence of a valid dispute that merits a hearing. As relief, Respondent requests that Complainant's petition for hearing be denied and dismissed with prejudice.

On October 10, 2016, the Administrative Law Judge issued a Preliminary Recommendation that Complainant's petition for hearing be denied on the issues of gender discrimination and hostile work environment, and granted on the issue of retaliation.

B. Freddy Kanda v. Department of Human Services, Wheat Ridge Regional Center, State Personnel Board case number 2016S010.

Complainant, a Client Care Aide II with Respondent Department of Human Services, Wheat Ridge Regional Center (WRRRC), filed a petition for a hearing on October 13, 2015, arguing that his elimination from consideration for a position as a Quality Assurance Investigator was discriminatory on the basis of his race/color. As relief, Complainant requests that he be offered the position of Quality Assurance Investigator.

Respondent argues that Complainant has failed to demonstrate that valid issues exist that merit a hearing. Respondent alleges that Complainant has offered no evidence to support his claim that Respondent's decision not to select him for the Quality Assurance Investigator position was based on his race or color. As relief, Respondent requests that the Board deny Complainant's petition for a hearing.

On October 12, 2016, the Administrative Law Judge issued a Preliminary Recommendation that the petition for hearing be denied and to refer to the State Personnel Director.

C. Larry Madrid v. Department of Corrections, State Personnel Board case number 2016G096.

Complainant, a certified employee of the Department of Corrections (DOC), filed a petition for a hearing on June 3, 2016, arguing that his reassignment from DOC's Pueblo complex to the Fremont Correctional Facility was arbitrary and capricious, and that it is part of a pattern of ongoing harassment and retaliation for disclosures protected by the Whistleblower Act. As relief, Complainant requests a rescission of his reassignment, reimbursement for his increased travel costs, and an award of his attorney's fees.

Respondent argues that Complainant has failed to state a *prima facie* case of violation of the Whistleblower Act and therefore has not demonstrated issues that merit a hearing. As relief, Respondent requests that Complainant's petition for a hearing be denied.

On November 1, 2016, the Administrative Law Judge issued a Preliminary Recommendation that the petition for hearing be denied.

D. Michael A. Zordani v. Department of Corrections, Denver Complex, State Personnel Board case number 2016G099.

Complainant appeals Respondent's refusal to allow him to wear sunglasses for his purported disability. Complainant contends that Respondent's refusal constitutes discrimination on the basis of disability. As relief, Complainant requests that his disability be accommodated; that the performance document presented to him on March 3, 2016 be purged from his personnel file; that the most recent yearly evaluation that he received on or about April 29, 2016 be purged of any mention of a violation of IA 1450-31- Appearance and Dress Code, purged of any mention of violation of AR 1450-1- Code of Conduct; and that the Warden and his supervisory staff be subject to corrective or disciplinary action for failure to act on complainant of alleged discrimination.

Respondent argues that this matter should not be set for hearing due to Complainant's alleged failure to establish grounds that merit a hearing. More specifically, Respondent asserts that Complainant does not have a disability and, even if he did, Complainant's refusal to participate in the interactive process undermines his ability to assert a viable claim of disability discrimination. As relief, Respondent requests that the Board deny Complainant's petition for hearing and dismiss this matter with prejudice.

On November 2, 2016, the Administrative Law Judge issued a Preliminary Recommendation that the petition for hearing be granted.

E. Michelle Muller v. Department of Corrections, Colorado Board of Parole, State Personnel Board case number 2016G001(c)

Complainant, an Administrative Assistant III employed by the Colorado Board of Parole, has filed four petitions for a full, evidentiary hearing, one on July 1, 2015, one on November 9, 2015, and one on March 3, 2016, which was superseded by the petition filed on May 12, 2016. The petitions filed on July 1, 2015, November 9, 2015 and May 12, 2016, have been consolidated in the present matter. Each petition was preceded by one or more grievances, which were addressed through Respondent's grievance process. Complainant alleges ongoing age discrimination, retaliation for protected activity in opposing age discrimination, and a hostile work environment. As relief, Complainant has requested a number of remedies, including, but not limited to, a different supervisor, an end to the purported hostile work environment, purging of negative materials in her personnel file, and payment of attorney's fees and expenses.

Respondent argues that Complainant has failed to establish grounds that merit a hearing. As relief, Respondent requests that the Board deny Complainant's petitions for hearing and dismiss this matter with prejudice.

PRELIMINARY NOTE

Due to the numerous grievances and petitions for hearing filed by Complainant, as well as the numerous information sheets and replies and the number of exhibits submitted by the parties, which can only be characterized as voluminous, a detailed procedural and factual history is required for a better understanding of this matter and is addressed in the following section. Due to the extraordinary length of this Preliminary Recommendation, which includes the verbatim texts of all the parties' information sheets and rebuttals, a Table of Contents is attached hereto as Appendix A. In addition, a chart listing Complainant's grievances and

petitions is attached hereto as Appendix B for the benefit of anyone reviewing this Preliminary Recommendation who might otherwise get lost in the thicket of grievances, petitions, allegations and claims.

On November 2, 2016, the Administrative Law Judge issued a Preliminary Recommendation that Complainant's petitions for hearing be granted solely on the issue of unlawful retaliation and that Complainant's other claims be dismissed with prejudice.

V. INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES

- A. Melissa Lorenzo v. Department of Human Services, Office of Community Access & Independence, Division of Regional Center Operations, Pueblo Regional Center, State Personnel Board case number 2016B029.

Complainant, a certified employee, appeals the termination of her employment effective November 2, 2015, arguing that this termination was arbitrary and capricious. She seeks all damages to make her whole, including but not limited to rescission and removal of the disciplinary action, reinstatement to her position of Health Care Technician I effective the date of her termination, an award of back pay and benefits, and an award of attorney fees and costs.

Respondent argues that the action of the appointing authority should be affirmed, that all relief requested by Complainant be denied, and that Complainant's appeal be dismissed with prejudice.

On October 17, 2016 the ALJ issued an Initial Decision ordering Respondent's action be reversed and rescinded the termination of Complainant's employment. Complainant should be reinstated with full back pay and made whole for all lost benefits, with statutory interest.

VI. REVIEW OF THE MINUTES FROM THE OCTOBER 18, 2016 PUBLIC MEETING OF THE STATE PERSONNEL BOARD

VII. ACKNOWLEDGMENTS

DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS OCTOBER 18, 2016 PUBLIC MEETING:

- A. Jonathan Handy v. Department of Agriculture, State Personnel Board case number 2016G092.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the Petition for Hearing.

- B. Carol J. Kromer v. Department of Corrections, Colorado Board of Parole, State Personnel Board case number 2016G089.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the Petition for Hearing.

- C. Tammy Chapman v. Department of Revenue, Tax Auditing and Compliance, State Personnel Board case number 2016G094.

The Board voted to uphold the Preliminary Recommendation of the Administrative Law Judge to grant the petition for hearing to determine whether the Respondent violated Director's Administrative Procedure 8-89 regarding retaliation AND to modify the recommendation by granting a hearing on Complainant's Whistleblower claim

VIII. ADMINISTRATIVE MATTERS & COMMENTS

A. ADMINISTRATIVE MATTERS

- Cases on Appeal to Appellate Courts

B. OTHER BOARD BUSINESS

(Director's Report)

- Board staff and counsel review of Board Rules for updates, clarification and general "housekeeping".
- SPB settlement program update.

C. GENERAL COMMENTS FROM ATTORNEYS, EMPLOYEE ORGANIZATIONS, PERSONNEL ADMINISTRATORS, AND THE PUBLIC

IX. PROPOSED LEGISLATION AND/OR RULEMAKING

X. EXECUTIVE SESSION

ADJOURN:

REGULARLY SCHEDULED BOARD MEETINGS - 9:00 a.m.

January 19, 2016	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 103 Denver, CO 80203
February 16, 2016	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 103 Denver, CO 80203
March 15, 2016	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 103 Denver, CO 80203
April 19, 2016	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 103 Denver, CO 80203
May 17, 2016	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 103 Denver, CO 80203
June 21, 2016	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 103 Denver, CO 80203
July 19, 2016	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 103 Denver, CO 80203
August 16, 2016	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 103 Denver, CO 80203
September 20, 2016	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 103 Denver, CO 80203
October 18, 2016	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 103 Denver, CO 80203
November 15, 2016	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 103 Denver, CO 80203
December 20, 2016	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 103 Denver, CO 80203